



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Sacramento Fish and Wildlife Office  
2800 Cottage Way, Room W-2605  
Sacramento, California 95825-1846

IN REPLY REFER TO:

1-1-00-TA-1514

April 27, 2000

Mr. Jeff Bray  
LSA Associates, Inc.  
4200 Rocklin Road, Suite 11B  
Rocklin, California 95677

Subject: Comments on the *Route 65 Bypass Project - Survey Protocol for State and Federally Listed Species* associated with the *Draft Route 65 Lincoln Bypass Natural Environment Study Report*

Dear Mr. Bray:

This letter is in response to your March 12, 2000, telephone request for comments on the *Route 65 Bypass Project - Survey Protocol for State and Federally Listed Species* (Survey Protocols) associated with the *Draft Route 65 Lincoln Bypass Natural Environment Study Report* (Draft NES Report). The November 18, 1999 Draft NES Report, concerning the rerouting of State Highway 65 in Placer County, was received by the U.S. Fish and Wildlife Service (Service) on March 14, 2000. The survey protocols accompanied the Draft NES Report. Revisions to the Draft NES Report were received concurrently on March 14, 2000. These comments are being provided as Technical Assistance and refer only to the proposed Survey Protocols. The Draft NES Report is being reviewed and coordinated separately by the Service's Wetlands Branch.

The Service has reviewed the methodologies associated with the proposed Survey Protocols and found that they appear to be adequate. Data collected from the surveys may assist in screening a preferred Route 65 alignment from a set of six potential Route 65 alignments or a combination thereof. The Service does have some concerns with the qualitative evaluation of habitat for listed species and the recovery permits required to collect these species.

The Survey Protocols address the threatened vernal pool fairy shrimp (*Branchinecta lynchi*) and vernal pool tadpole shrimp (*Lepidurus packardii*) (listed branchiopods). Vernal pool fairy shrimp were detected within all six alignments and vernal pool tadpole shrimp occur immediately west of the project area. The Survey Protocols go on to state that the presence of these species is assumed in all vernal pools within the project area. It should be noted that listed branchiopods may also occur within other ephemeral wetland habitats.



Listed branchiopods are not limited exclusively to wetlands designated as vernal pools during a formal Clean Water Act Section 404 wetlands delineation. The qualitative habitat evaluation associated with screening the six alternatives must be of sufficient scope to include *all* suitable habitat for listed branchiopods, not just those wetlands that have been delineated as vernal pools. Omission of other shrimp habitats will result in an inaccurate assessment of each alignment's effects to listed species.

The Survey Protocols should be adjusted to reflect the evaluation of *all* suitable habitat for the listed branchiopods and not be limited solely to vernal pools. Specifically, the Service requests that the following changes be made to the paragraphs within the section entitled *Invertebrates: Vernal Pool Fairy Shrimp* (*Branchinecta lynchi*) - FT, *Vernal Pool Tadpole Shrimp* (*Lepidurus packardii*):

1. The last sentence of the first paragraph should be changed to "As a result, potential impacts to these species will be determined based on the evaluation of impacts to their respective habitats."
2. The paragraph associated with the Winter 1999/00 surveys should be changed to read, "A qualitative analysis will be performed for all habitat suitable for vernal pool fairy shrimp and vernal pool tadpole shrimp within the preferred alignment. Results of this analysis will be used to determine if impacts to vernal pool fairy shrimp and vernal pool tadpole shrimp habitat can be minimized through adjustment of the overall project footprint."
3. The section referenced in item 2, above, should be changed to reflect the probable later date for selection of the preferred alignment; perhaps Winter 2000/2001.
4. References strictly to vernal pools throughout the Draft NES Report should be changed to reflect all suitable habitat for listed branchiopods wherever appropriate.

It should also be noted that sampling for aquatic or any wetland-obligate species may also result in the take of either of the listed branchiopods. As such, all individuals sampling for *any* species within vernal pools or other habitat suitable for vernal pool fairy shrimp and/or vernal pool tadpole shrimp shall possess a section 10(a)(1)(a) recovery permit for listed branchiopods or accompany a permitted individual. This requirement is in addition to all other applicable permits.

All surveys should be conducted using the most current guidelines from the Service. Listed branchiopods and collections within their habitat are subject to the April 19, 1996, *Interim Survey Guidelines to Permittees for Recovery Permits under Section 10(a)(1)(A) of the Endangered Species Act for the Listed Vernal Pool Branchiopods*. Valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*) habitat shall be surveyed according to the guidance contained in the July 9, 1999, *Conservation Guidelines for the Valley Elderberry Longhorn Beetle*. California red-legged frogs will be subject to the conditions set forth in the February 18, 1997, *U.S. Fish and Wildlife Service Guidance on Site Assessment and Field Surveys for California Red-legged Frogs*.



The Service accepts the general methodologies proposed for the screening of the six proposed alignments, but there are greater issues regarding the findings of these preliminary surveys. The proposed Survey Protocols do not represent a scientifically sound approach for determining the biological effects associated with the eventual construction of the Route 65 Lincoln Bypass along a preferred alignment. In particular, the Study Area Boundaries (Boundaries) noted on Figure 8b of the Draft NES Report will not allow for a full analysis of the direct, indirect, interdependent and interrelated effects associated with a preferred alignment.

It is understood that the present proposed survey effort is intended only to screen the six existing alternatives with the goal of selecting a single, preferred alternative. The Service's concern is that data collected within the relatively limited Boundaries will not be sufficient to initiate a formal section 7 consultation on a preferred alternative in the future. The limited boundary may also result in the selection of a preferred alternative that causes unforeseen adverse effects. The future section 7 consultation will be further impacted should surveys for listed branchiopods be limited only to vernal pools. All parties involved with the planning effort for the Route 65 Lincoln Bypass should be made aware of the potential inability of the Survey Protocols to provide the information required to initiate formal consultation as described at 50 CFR §402.14(c).

If you have any questions or concerns about these comments, recovery permits, or the consultation process in general, please contact Jason Douglas or Chris Nagano at (916) 414-6645.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen J. Miller".

Karen J. Miller  
Chief, Endangered Species Division

cc: Caltrans (Attention: Karen McWilliams)